

REMARKS

Status of the Claims

The present Office Action addresses claims 1-19, 21-27, 29-33, and 35, however claims 8 and 9 are cancelled by this paper. Applicant respectfully requests reconsideration of pending but rejected claims 1-7, 10-19, 21-27, 29-33, and 35 in view of the remarks herein.

Amendments to the Claims

Independent claims 1, 12, 24, and 32 have been amended to include limitations previously set forth in claims 8 and 9, which are now cancelled. Additional support for these amendments can be found throughout the specification, for example in FIG. 1D and in paragraph [0023] of the published application. Dependent claims 7, 10, 18, 21, 27, and 29 are amended to correspond with the amendments made to the independent claims. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 102(e)

Claims 1, 6-12, 17-19, 21, 22, 24, 26, 27, 29-33, and 35 are rejected pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2004/0260284 (“Parker”). Applicant respectfully disagrees.

Independent claim 1 recites a bone-engaging member adapted to engage bone, the bone-engaging member having a head formed thereon. Claim 1 also recites a U-shaped receiver member having a distal cavity that movably seats the head of the bone-engaging member and having a proximal recess that is adapted to seat a spinal fixation element. The cavity and the recess include an opening extending therebetween and having a size that prevents passage therethrough of a spinal fixation element seated in the recess. Independent claim 24 similarly recites a method that includes implanting a plurality of anchoring devices into adjacent vertebrae in a spinal column, each anchoring device including a bone-engaging member that is fixedly attached to the vertebra and a U-shaped receiver member having a distal cavity that seats a head formed on the bone-engaging member. The U-shaped receiver member is freely movable relative to the bone-engaging member and the vertebra. The method also recites coupling a spinal fixation element to a proximal recess in the U-shaped receiver member on each anchoring

device such that the fixation element extends between each adjacent vertebrae, a cavity and the recess of the U-shaped receiver member including an opening extending therebetween and having a size that prevents passage of the spinal fixation element seated in the proximal recess. The method also includes locking the spinal fixation element to the U-shaped receiver member on each anchoring device to maintain the adjacent vertebrae at a fixed distance relative to one another, the spinal fixation element being seated in the opening but prevented from contacting the bone-engaging member, thereby allowing free movement of each U-shaped receiver member relative to each bone-engaging member

Parker does not teach or even suggest a U-shaped receiver member having a distal cavity and a proximal recess including an opening extending therebetween and having a size that prevents passage therethrough of a spinal fixation element seated in the proximal recess. Rather, as shown in FIG. 1 of Parker, the receiver (115) is solid between the recess (125) for the rod (200) and the saddle (112) for the screw head (110). Accordingly, independent claims 1 and 24, as well as claims 2-7 and 10-11 which depend from claim 1 and claims 25-27, and 29-31 which depend from claim 24, distinguish over Parker and represent allowable subject matter.

Independent claim 12 recites a U-shaped receiver member having a cavity that freely movably seats the head of the bone-engaging member in a distal portion of the cavity and that is configured to receive the spinal fixation element in a proximal portion of the cavity. The proximal and distal portions of the cavity are spaced apart to prevent contact between the bone-engaging member and the spinal fixation element. As discussed above, the receiver (115) in Parker is solid between the seats for the rod (200) and the screw head (110), so there is not a single cavity with proximal and distal portions that are spaced apart to prevent contact between the rod (200) and the screw head (110). Accordingly, independent claim 12, as well as claims 13-19, 21, and 22 which depend therefrom, distinguish over Parker and represent allowable subject matter.

Independent claim 32 recites a U-shaped receiver member having a distal seat for receiving at least a portion of the head of the bone screw, a proximal seat formed on an internal surface thereof for receiving a spinal fixation rod, and opposed protrusions that define an

opening between the distal seat and the proximal seat. Again as discussed above, Parker does not have an opening between the distal seat and the proximal seat, so it cannot have opposed protrusions that define the opening. Accordingly, independent claim 32, as well as claims 33 and 35 which depend therefrom, distinguish over Parker and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. § 102(b)

Claims 1, 6, 9-12, 17, 19, 21, 22, 24, 26, 29-33, and 35 are rejected pursuant to 35 U.S.C. § 102(b) as being anticipated by German Patent No. DE 4107480 A1 (“Ulrich”). Applicant respectfully disagrees.

As shown in FIG. 9 of Ulrich, a top portion of a receiver (2) seats a rod, while a bottom portion of the receiver (2) seats a head of a screw (1). The receiver (2) is solid. There is no opening in the receiver (2) between the recess for the rod and the cavity for the screw head, and hence there are also no protrusions defining an opening. As discussed above, independent claims 1, 12, 24, and 32 recite such an opening and/or such protrusions. Accordingly, independent claims 1, 12, 24, and 32, as well as their dependent claims 2-6, 10-11, 17, 19, 21, 22, 25, 26, 29-31, 33, and 35, distinguish over Ulrich and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. § 103

Claims 7, 8, 18, 23, and 27 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Ulrich. Claim 23 is rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Parker. Applicant respectfully disagrees. At least for the reasons explained above, neither Ulrich nor Parker anticipate independent claims 1, 12, 24, and 32. Accordingly, claims 7, 18, 23, and 27 are allowable at least because they depend from an allowable base claim.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant’s amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to

Application No. 10/709,795
Reply to Office Action of June 19, 2007

Docket No.: 101896-252 (DEP5319)

telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

Dated: September 19, 2007

Respectfully submitted,

By 
Lisa Adams
Registration No.: 44,238

NUTTER MCCLENNEN & FISH LLP
World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604
(617) 439-2550
(617) 310-9550 (Fax)
Attorney for Applicant

1663158.1